STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ANTHONY D. COLLINS,

Defendant-Appellant.

UNPUBLISHED
August 23, 2002

No. 232245
Wayne Circuit Court
LC No. 00-004391

Before: Zahra, P.J., and Hood and Jansen, JJ.

PER CURIAM.

Defendant was convicted, following a bench trial, of carjacking, MCL 750.529a, and possession of a firearm during the commission of a felony, MCL 750.227b. He was sentenced to twenty-seven months to fifteen years' imprisonment for the carjacking conviction to be served consecutive to two years' imprisonment for the felony-firearm conviction. Defendant appeals as of right, and we affirm.

The victim, Terrence Johnson, knew defendant for eight or nine years "from the neighborhood." On December 17, 1999, defendant went to Johnson's residence with friends. Johnson told defendant that he was on his way to the store, and they should follow him. When they arrived at the store, defendant entered Johnson's vehicle through the unlocked passenger door. After he entered the vehicle, defendant placed a gun in Johnson's side. Johnson exited the vehicle, and defendant drove off in Johnson's car. Johnson went to the police station to report the incident. Johnson denied the allegations that he owed defendant money or engaged in drug dealing with defendant.

Without objection, Michael Swan testified that defendant pointed a gun at him as he walked toward his aunt's house on December 22, 1999. Defendant asked Swan, Johnson's cousin, where Johnson was. Defendant told Swan that he did not like Johnson and would "bust him up."

Erica Brown testified that she was a passenger with defendant in the vehicle that followed Johnson to the store. There was no indication that defendant had a gun. Once they arrived at the store, defendant exited the vehicle and entered the passenger side of Johnson's vehicle. Johnson walked into the store. Defendant jumped into the driver's seat and pulled out of the parking lot. Johnson came out of the store with a brown paper bag and looked for his car. He approached the vehicle in which Brown was a passenger and asked about his vehicle. Johnson indicated that

defendant was "playing around." Johnson took defendant's seat in the car, and they drove around looking for defendant, but did not locate defendant or Johnson's vehicle. Sparkle Eldridge's testimony mirrored the testimony given by Brown, but she denied that their testimony had been rehearsed.

Defendant admitted that he took Johnson's car without permission. However, defendant testified that Johnson owed him money, and he planned on "holding onto" the car until Johnson paid him. Defendant did not plan on taking the vehicle until they arrived at the store. Johnson signaled for defendant to enter his vehicle. After defendant entered the car, Johnson asked for money for cigarettes and gas. Defendant gave him money, but drove off when Johnson got out to enter the store. Defendant learned that Johnson threatened the mother of defendant's child. As a result, he took the rims and steering wheel off Johnson's car and left it on bricks behind an apartment building.

The trial court found defendant guilty as charged. In rendering its verdict, the trial court concluded that the testimony of Brown and Eldridge was not credible. The trial court noted that the testimony of these witnesses was virtually identical and, when Eldridge was questioned regarding the similarities, she laughed and smiled. The trial court also concluded that defendant's testimony was "simply not credible."

Defendant first alleges that there was insufficient evidence to support the carjacking conviction because the "majority" of the testimony revealed that the car was taken after Johnson entered the store. We disagree. To convict a defendant of carjacking, the prosecution must prove (1) that the defendant took a motor vehicle from another person, (2) that the defendant did so in the presence of that person, a passenger, or any other person in lawful possession of the motor vehicle, and (3) that the defendant did so either by force or violence, by threat of force or violence, or by putting the other person in fear. *People v Davenport*, 230 Mich App 577, 579; 583 NW2d 919 (1998). When evaluating a challenge to the sufficiency of the evidence, a reviewing court must examine the evidence in the light most favorable to the prosecutor and determine whether a rational trier of fact could find that each element of the crime was proved beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999). In determining whether there was sufficient evidence to sustain a conviction, all conflicts in the evidence must be resolved in favor of the prosecution. *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997). Questions of credibility and intent are properly resolved by the trier of fact, *In Re Forfeiture of $25,505*, 220 Mich App 572, 581; 560 NW2d 341 (1996), and deference must be given to the trier of fact's determination. See *People v Lemmon*, 456 Mich 625, 646; 576 NW2d 129 (1998).

Appellate review of challenges to the sufficiency of the evidence is not premised on "majority" rule. Thus, the number of witnesses that corroborate a defendant's version of events is irrelevant. Rather, appellate courts give deference to the trial court's superior ability to assess the credibility of the witnesses before it. *Lemmon*, *supra*. In the present case, the trial court concluded that the testimony presented on behalf of defendant was simply not credible. Giving deference to the trial court's assessment of credibility, we cannot conclude that there was insufficient evidence to support the carjacking conviction.

Defendant next alleges that he was denied a fair trial when the prosecutor introduced Swan's testimony in violation of MRE 404(b). We disagree. Irrespective of the propriety of

admission of this evidence, any error was harmless. *People v Jones*, 168 Mich App 191, 194; 423 NW2d 614 (1988). A judge is presumed to possess an understanding of the law that allows him to ignore errors and decide a case based on properly admitted evidence. *Id*. Indeed, in the present case, the trial court noted that the testimony of Swan was irrelevant and was not considered when rendering the verdict. Consequently, defendant's claim of ineffective assistance, presumed on the failure to object to this testimony, is without merit. Defense counsel was not required to make a meritless objection. *People v Knapp*, 244 Mich App 361, 386; 624 NW2d 227 (2001).

Affirmed.

/s/ Brian K. Zahra
/s/ Harold Hood
/s/ Kathleen Jansen